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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,371	04/04/2001	Jason P. McDevitt	KCX-250 (15306)	2875
22827	7590	06/04/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			HAMILTON, LALITA M	
			ART UNIT	PAPER NUMBER
			3624	
DATE MAILED: 06/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/826,371

Applicant(s)

MCDEVITT ET AL.

Examiner

Lalita M Hamilton

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3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on March 3, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24,26-33 and 35-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24,26-33 and 35-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### Summary

On December 16, 2003, an Office Action was sent to the Applicant rejecting claims 1-24, 26-33, and 35-38. On March 3, 2004, the Applicant responded with Request for Reconsideration.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-9, 11-13, 15, 17-18, 24, 26-30, 32-33, and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarver (5,362,306).

McCarver discloses a hollow, tubular bandage comprising a base web having a nonelastic nonwoven web of fibrous material, the base web being laminated with an elastic layer, open distal and proximal ends being open and allowing for insertion of an appendage, an elastic component providing form-fitting properties, an elastic film, and the non-elastic, nonwoven web forming the interior surface of the sleeve (claims 1 and 24--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the sleeve being tapered for a better fit (claims 2, 26, and 36--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the ends being adapted to allow insertion of an appendage and the open distal end being adapted to receive an appendage inserted at the open proximal end such that the appendage can be inserted through the sleeve (claim 3--fig.3-all;

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col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the nonwoven web being composed of one of spunbonded or meltblown fiber webs (claims 4 and 27--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the elastic component comprising an elastomeric material (claim 5--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the nonwoven web comprising a thermoplastic polymer (claim 6--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the elastic layer comprises a fibrous material (claim 8--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the elastic layer comprises a film (claim 9--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the sleeve comprises a stretch-bonded laminate (claims 11, 28, and 37--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), the sleeve comprises a neck-bonded laminate (claims 12, 29, and 37--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), a moisture barrier being incorporated onto at least a portion of the base web, the moisture barrier being substantially impermeable to liquids when contacted therewith (claims 13 and 30--fig.3-all; col.2, lines 13-58; col.4, lines 5-21; and col.5, line 53 to col.6, line 39), the moisture barrier comprises a plastic film (claim 15--fig.3-all; col.2, lines 13-58; col.4, lines 5-21; and col.5, line 53 to col.6, line 39), the moisture barrier comprises a multi-layered laminate (claim 17--fig.3-all; col.2, lines 13-58; col.4, lines 5-21; and col.5, line 53 to col.6, line 39), one of the layers of the moisture barrier comprising a nonwoven web of fibrous material (claim 18--fig.3-all; col.2, lines 13-58; col.4, lines 5-21; and col.5, line 53 to col.6, line 39), the sleeve member has a shape configured to fit on a finger or toe (claim 32--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), a hollow sleeve member having a first open distal end and a

second open proximal end spaced from said distal end, said sleeve member having a shape configured to receive a finger or a toe, said sleeve member comprising a first panel attached to a second panel, the panels forming seams that extend along the length of the sleeve, the first panel comprising an elastic nonwoven material, said elastic nonwoven material with form fitting properties, the second panel comprising a nonwoven web, the nonwoven web defining at least a portion of an interior surface of the hollow sleeve (claim 33--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39), and the nonwoven web of the second panel is nonelastic (claim 35--fig.3-all; col.2, lines 13-58; and col.5, line 53 to col.6, line 39).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarver in view of Abuto (5,804,021).

McCarver discloses the invention substantially as claimed; however, McCarver does not disclose pulp fibers. Abuto teaches a fibrous nonwoven laminate for use in bandages comprising pulp fibers (col.1, lines 20-27; col.2, lines 5-8; and col.6, line 40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute pulp fibers as taught by Abuto into the device disclosed by McCarver as an alternative choice of material for elastic component.

Claims 10, 14, 16, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarver.

McCarver discloses the invention substantially as claimed; however, McCarver does not disclose the elastic component comprising foam, the moisture barrier being vapor permeable, or the plastic film being microporous. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an elastic component comprising foam, the moisture barrier being vapor permeable, and the plastic film being microporous since it has been held to be within the general skill of a worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 20-21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarver in view of Tanihara (5,77,229).

McCarver discloses the invention substantially as claimed; however, McCarver does not disclose additives or chitosan. Tanihara teaches a bandage comprising additives (col.10, lines 43-65) and chitosan (col.7, lines 20-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate additives and chitosan as taught by Tanihara into the bandage disclosed by McCarver to provide means of deterring infection in the area being treated.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarver and Tanihara as applied claim 20 above, and in further in view of Satoh (5,120,758).

McCarver discloses and Tanihara teaches the invention substantially as claimed; however, neither reference discloses nor teaches a cyclooxygenase inhibitor. Satoh teaches a formulation for application to the skin comprising cyclooxygenase (col.13, lines 13-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a cyclooxygenase inhibitor as taught by Satoh into the device disclosed by McCarver and taught by Tanihara to provide an alternative material for deterring infection.

***Response to Arguments***

Applicant's arguments with respect to claims 1-24, 26-33, and 35-38 have been considered but are moot in view of the new ground(s) of rejection.

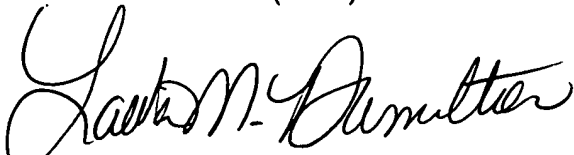
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LMH